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CASES NOTED

ADMIRALTY—DOCTRINE OF UNSEAWORTHINESS

Defendants' vessel was brought into a shipyard for an annual overhaul. Among other repairs, the ship's generators were to be sprayed with carbon tetrachloride. This latter work was subcontracted to decedent's employer, a company specially equipped to handle electrical work. On a day when the crew was not aboard, the decedent and his foreman engaged in cleaning these generators. As a result of the improper functioning of the ship's ventilating system the decedent died from carbon tetrachloride poisoning. The decedent's administratrix recovered damages in a federal district court under instructions to the jury whereby either unseaworthiness of the vessel or negligence of the shipowner would render the defendants liable. After affirmance by the court of appeals, the Supreme Court of the United States vacated the judgment and remanded the cause. *Held*, the doctrine of unseaworthiness was inapplicable because the decedent in no way performed "the type of work" traditionally done by a member of the ship's crew.¹ *United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki*, 79 Sup. Ct. 517 (1959).

As American maritime law developed in the federal court system, justice seemed to require that the shipowner should have an absolute, unqualified and non-delegable duty to furnish to certain persons a seaworthy ship.² The early architects of this doctrine applied it to the ship's crew³ and eventually permitted seamen to recover damages for personal injuries proximately caused by the unseaworthiness of the vessel.⁴ In 1946, the Supreme Court in *Seas Shipping Co. v. Sieracki*⁵ extended the doctrine of unseaworthiness to cover stevedores, because the latter performed "seamen's work." Since

1. The case, percolated on diversity of citizenship jurisdiction, arose under the New Jersey Wrongful Death Act. N.J. STAT. 2A:31-1 (1952). The Supreme Court briefly discussed the applicability of state law in maritime cases and the issue of the defendants' negligence. These questions are not considered in this casenote.

2. *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944). See GILMORE & BLACK, ADMIRALTY §§6-38—6-44 (1957).

3. "[L]aw and reason will imply sundry engagements of the captain to the mariners. . . . First, that at the commencement of a voyage, the ship shall be furnished with all the necessary and customary requisites for navigation, or, as the terms is, shall be found seaworthy;" *Dixon v. The Cyrus*, 7 Fed.Cas. 755, 757 (No. 3930) (D.C.D.Pa. 1789).

4. "[T]he vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship. . . ." *The Osceola*, 189 U.S. 158, 175 (1903) (dictum).

5. 328 U.S. 85 (1946). See also *Alaska S.S. Co. v. Petterson*, 347 U.S. 396 (1954).

this Supreme Court ruling, the federal judiciary has consistently applied the extension of coverage to persons engaged in the loading or unloading of a ship.⁶ However, the federal courts have been in irreconcilable conflict as to the feasibility of expanding the *Sieracki* doctrine to other shore-based workers.⁷

The courts which have given a narrow construction to the range of coverage under the doctrine of unseaworthiness have emphasized that only those persons performing the traditional tasks of the ship's crew would fall within the protection of the doctrine.⁸ These tribunals have refused to extend the doctrine to repairmen,⁹ tank and boiler cleaners,¹⁰ marine painters,¹¹ shipyard riggers,¹² firemen¹³ or bread salesmen.¹⁴ The courts of the Second Circuit have been especially adamant and vociferous in their refusal to expand *Seas Shipping Co. v. Sieracki*.¹⁵ In *Guerrini v. United*

6. For a listing of the relevant cases see Annot., 98 L. Ed. 160, 164-65 (1953).

7. See Annot., 98 L. Ed., 160, 165-68 (1953); 80 C.J.S. *Shipping* §85e (1953, Supp. 1958); 2 NORRIS, SEAMEN §622 n.14 (Supp. 1958).

8. *McDaniel v. The M/S Lisholt*, 257 F.2d 538 (2d Cir. 1958); *West v. United States*, 256 F.2d 671 (3d Cir. 1958); *Raidy v. United States*, 252 F.2d 117 (4th Cir. 1958); *Berge v. National Bulk Carriers Corp.*, 251 F.2d 717 (2d Cir. 1958); *Berryhill v. Pacific Far E. Line*, 238 F.2d 385 (9th Cir. 1956); *Rich v. United States*, 192 F.2d 858 (2d Cir. 1951).

9. *West v. United States*, 256 F.2d 671 (3d Cir. 1958); *Union Carbide Corp. v. Goett*, 256 F.2d 449 (4th Cir. 1958); *Raidy v. United States*, 252 F.2d 117 (4th Cir. 1958); *Berryhill v. Pacific Far E. Line*, 238 F.2d 385 (9th Cir. 1956); *Martini v. United States*, 192 F.2d 649 (2d Cir. 1951), *cert. denied*, 343 U.S. 926 (1952); *Muratore v. United States*, 100 F.Supp. 276 (S.D.N.Y. 1951); *Peterson v. United States*, 80 F.Supp. 84 (S.D.N.Y. 1947); *Armento v. United States*, 74 F.Supp. 198 (E.D.N.Y. 1947).

10. *Rich v. United States*, 192 F.2d 858 (2d Cir. 1951); *Guerrini v. United States*, 167 F.2d 352 (2d Cir. 1948), *cert. denied*, 335 U.S. 843 (1948); *Manera v. United States*, 124 F.Supp. 226 (E.D.N.Y. 1954); *Lopez v. United States*, 102 F.Supp. 870 (E.D.N.Y. 1952).

11. *Santiago v. United States*, 102 F.Supp. 425 (S.D.N.Y. 1952); *Lundberg v. Prudential S.S. Corp.*, 102 F.Supp. 115 (S.D.N.Y. 1951).

12. *Filipek v. Moore-McCormick Lines, Inc.*, 258 F.2d 734 (2d Cir. 1958); *Berge v. National Bulk Carriers Corp.*, 251 F.2d 717 (2d Cir. 1958); *Mikkelsen v. The Granville*, 192 F.2d 809 (2d Cir. 1951); *O'Connell v. Naess*, 176 F.2d 138 (2d Cir. 1949); *Lyon v. United States*, 163 F.Supp. 206 (E.D.N.Y. 1958); *Laffoon v. United States*, 101 F.Supp. 823 (S.D.N.Y. 1951); *Fine v. United States*, 66 F.Supp. 768 (E.D.N.Y. 1946).

13. *McDaniel v. The M/S Lisholt*, 257 F.2d 538 (2d Cir. 1958).

14. *Lee v. Pure Oil Co.*, 218 F.2d 711 (6th Cir. 1955).

15. *Filipek v. Moore-McCormack Lines, Inc.*, 258 F.2d 734 (2d Cir. 1958); *McDaniel v. The M/S Lisholt*, 257 F.2d 538 (2d Cir. 1958); *Berge v. National Bulk Carriers Corp.*, 251 F.2d 717 (2d Cir. 1958); *Rich v. United States*, 192 F.2d 858 (2d Cir. 1951); *Mikkelsen v. The Granville*, 192 F.2d 809 (2d Cir. 1951); *Martini v. United States*, 192 F.2d 649 (2d Cir. 1951), *cert. denied*, 343 U.S. 926 (1952); *O'Connell v. Naess*, 176 F.2d 138 (2d Cir. 1949); *Guerrini v. United States*, 167 F.2d 352 (2d Cir. 1948), *cert. denied*, 335 U.S. 843 (1948); *Lyon v. United States*, 163 F.Supp. 206 (E.D.N.Y. 1958); *Manera v. United States*, 124 F.Supp. 226 (E.D.N.Y. 1954); *Lopez v. United States*, 102 F.Supp. 870 (E.D.N.Y. 1952); *Santiago v. United States*, 102 F.Supp. 425 (S.D.N.Y. 1952); *Lundberg v. Prudential S.S. Corp.*, 102 F.Supp. 115 (S.D.N.Y. 1951); *Laffoon v. United States*, 101 F.Supp. 823 (S.D.N.Y. 1951); *Muratore v. United States*, 100 F.Supp. 276 (S.D.N.Y. 1951); *Peterson v. United States*, 80 F.Supp. 84 (S.D.N.Y. 1947); *Armento v. United States*, 74 F.Supp. 198 (E.D.N.Y. 1947); *Fine v. United States*, 66 F.Supp. 768 (E.D.N.Y. 1946); *But see Lester v. United States*, 234 F.2d 625 (2d Cir. 1956); *Torres v. The Kastor*, 227 F.2d 664 (2d Cir. 1955).

*States*¹⁶ Judge Learned Hand, critical of the wisdom of *Sieracki*, limited the *Sieracki* doctrine to stevedores and longshoremen until the Supreme Court sanctioned an innovation to the contrary.¹⁷ The Third and Fourth Circuits, although less vigorous in restricting the scope of the unseaworthiness doctrine, have recently supplemented the "type of work" criterion with the "navigability of the vessel" test.¹⁸ Consequently, workers on a ship lying in dry dock for structural changes were excluded from the protection of the unseaworthiness doctrine.¹⁹

Several courts, desiring to expand coverage under the unseaworthiness doctrine, have found great comfort in the 1953 Supreme Court decision of *Pope & Talbot, Inc. v. Hawn*²⁰ which appeared to be indicative of a liberalizing trend on the part of the high tribunal. In the *Hawn* case, a carpenter employed by an independent contractor was injured when he fell through an uncovered hatch hole on a ship while he was repairing grain-loading equipment. After refusing a request to overrule *Sieracki*, the Court held that Hawn was entitled to damages under the unseaworthiness doctrine. Mr. Justice Black, speaking for the majority, reasoned:

Sieracki's legal protection was not based on the name "stevedore" but on the type of work he did and its relationship to the ship and to the historic doctrine of seaworthiness. . . . Hawn was put to work on [the ship] so that the loading could go on at once. . . . His need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seamen who had been or were about to go on a voyage.

16. 167 F.2d 352 (2d Cir. 1948), *cert. denied*, 335 U.S. 843 (1948).

17. *Id.* at 354. See also Hand, J., concurring in *Lynch v. United States*, 163 F.2d 97, 99 (2d Cir. 1947). Other authorities on admiralty have also been gravely concerned over the possibilities of coverage inherent in *Sieracki*. "The inclusion of harbor workers in addition to stevedores under the seaworthiness doctrine is a logical extension of an illogical rule first enunciated in the *Sieracki* decision. . . . The basis for the giving of the extraordinary remedy of seaworthiness was twofold; (a) the realization out of a spirit of humanity that sailors under contract with the shipowner, about to embark on a voyage where the tempestuous forces of nature were likely to be encountered, were entitled to be provided with a vessel reasonably sound in hull and in gear, and (b) the inability of the indentured seaman to leave the vessel at will when a dangerous condition arose. Neither of these very real considerations face the harbor worker." 2 NORRIS, SEAMEN §622 (Supp. 1958). "It is submitted that in major part the legal difficulties presently attending the many faceted litigation which characteristically follows a harbor worker's shipboard injury are attributable to . . . (2) the extension of the doctrine of "insured seaworthiness" to harbor workers on a mistaken factual assumption that until recent days mariners performed harbor workers' services. . . ." Tetreault, *Seamen, Seaworthiness, and the Rights of Harbor Workers*, 39 CORNELL L.Q. 381, 424 (1954).

18. *West v. United States*, 256 F.2d 671 (3d Cir. 1958); *Union Carbide Corp. v. Goett*, 256 F.2d 449 (4th Cir. 1958); *Raidy v. United States*, 252 F.2d 117 (4th Cir. 1958).

19. *Raidy v. United States*, 252 F.2d 117 (4th Cir. 1958).

20. 346 U.S. 406 (1953).

All were subjected to the same danger. All were entitled to like treatment under law.²¹

it seems to me that the extension of this implied warranty to a repair crew which works for an independent contractor is unjustified. The Court can cite no authority for such a holding, and I think there is no logic in it. *Id.* at 423.

Professors Gilmore and Black in their textbook on admiralty have interpreted Justice Black's language as placing within the *Sieracki* doctrine "all workers who are exposed to shipboard hazards as a consequence of their employment."²² As a result of the *Hawn* ruling or a broad interpretation of *Sieracki* or both, the unseaworthiness doctrine has been extended to cover carpenters,²³ tank and boiler cleaners,²⁴ ship ceilers,²⁵ night watchmen,²⁶ members of the dock crew,²⁷ employees of the shipper,²⁸ seamen on an adjoining fuel barge²⁹ and members of the United States Army.³⁰

The two opposing views collided in the consideration of *United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki* and resulted in a 5-4 decision.³¹ Mr. Justice Stewart,³² in writing the majority opinion, adopted the language of the dissenting judge in the court of appeals to the effect that the decedent "was not doing what any crew member had ever done on this ship or anywhere else in the world so far as we are informed."³³ To substantiate this conclusion Justice Stewart noted two factors. First, the work could only be performed when the ship was "dead" with its generators

21. *Id.* at 412-13. It is interesting to note that Mr. Justice Black uses the "type of work" test to reach a conclusion antithetical to the courts of the Second Circuit. Compare Mr. Justice Jackson's dissent:

There may be some logic in saying that when a longshoreman or stevedore is brought aboard ship, the ship should be fit for sailing.—But

22. GILMORE & BLACK, *ADMIRALTY* 364 (1957).

23. Pope & Talbot, Inc. v. *Hawn*, 346 U.S. 406 (1953); *Mesle v. Kea S.S. Corp.*, 260 F.2d 747 (3d Cir. 1958); *Read v. United States*, 201 F.2d 758 (3d Cir. 1953); *Landgraf v. United States*, 75 F.Supp. 58 (E.D.Pa. 1947); *Sulovitz v. United States*, 64 F.Supp. 637 (E.D.Pa. 1945).

24. *Torres v. The Kastor*, 227 F.2d 664 (2d Cir. 1955); *Crawford v. Pope & Talbot, Inc.*, 206 F.2d 784 (3d Cir. 1953); *Christiansen v. United States*, 94 F.Supp. 934 (D.Mass. 1951) (dictum), *aff'd*, 192 F.2d 199 (1st Cir. 1951).

25. *Eagle Indemn. Co. ex rel. Beall v. United States Lines Co.*, 86 F.Supp. 949 (D.Md. 1949).

26. *Ross v. S.S. Zeeland*, 240 F.2d 820 (4th Cir. 1957).

27. *Imperial Oil, Ltd. v. Drlik*, 234 F.2d 4 (6th Cir. 1956) (dictum), *cert. denied*, 352 U.S. 941 (1956).

28. *Bochantin v. Inland Waterways Corp.*, 96 F.Supp. 234 (E.D.Mo. 1951), *appeal dismissed*, 191 F.2d 734 (8th Cir. 1951).

29. *Capadona v. The Lake Atlin*, 101 F.Supp. 851 (S.D.Cal. 1951).

30. *Caudill v. Victory Carriers*, 149 F.Supp. 11 (E.D.Va. 1957).

31. The majority included Justices Stewart, Frankfurter, Clark, Harlan and Whitaker. The minority consisted of Mr. Justice Brennan, Mr. Chief Justice Warren and Justices Black and Douglas. Mr. Justice Frankfurter also wrote a brief concurring opinion on the construction of state law. See *The M/V "Tungus" v. Skovgaard*, 79 Sup. Ct. 523 (1959).

32. When Mr. Justice Stewart was sitting on the bench of the court of appeals for the Sixth Circuit, he apparently desired that *Sieracki* should be limited to its facts; *Lee v. Pure Oil Co.*, 218 F.2d 711, 713 (6th Cir. 1955).

33. *Halecki v. United N.Y. & N.J. Sandy Hook Pilots Ass'n*, 251 F.2d 708, 715 (2d Cir. 1958).

dismantled and its crew completely off duty. Second, spraying the generators "was the work of a specialist, requiring special skill and special equipment."³⁴ The contention that many modern ships carry electricians in their crews was dismissed as immaterial.

The dissenting justices relied heavily upon the *Sieracki* and *Hawn* cases. Advocating a wide application of the "humanitarian policy" of seaworthiness, the minority decried the fact that "today's shipowner escapes his absolute duty because his vessel is modern and outfitted with complicated and dangerous equipment, and because a pattern of contracting out a sort of work on it has become established."³⁵ The majority's standards of the readiness of the ship for immediate voyage and of the degree of specialization required to perform the work were criticized for leaving "confusion . . . to breed further litigation in an already heavily litigated area of the law."³⁶ The minority would affirm the court of appeal's opinion, which was written by Judge Learned Hand.³⁷

An evaluation of the *Halecki* case is most difficult. The majority arguments are convincing and in theory appear to coincide with the traditional concepts of unseaworthiness. Nevertheless, one can not help but agree with the minority that chaos has been added to confusion. This web of diversity is best illustrated by the predicament in which Judge Learned Hand must find himself. As previously indicated, he had refused to extend the scope of the unseaworthiness doctrine beyond stevedores and longshoremen until the Supreme Court would give him a clear mandate to act otherwise.³⁸ This mandate came in *Pope & Talbot, Inc. v. Hawn*, so that Judge Hand in deciding the *Halecki* case on the intermediate level declared "it is now clear that we were wrong . . . in limiting the warranty [of unseaworthiness] to those doing longshoremen's duties."³⁹ For this acquiescence in the desires of the Supreme Court, he was reversed. Unfortunately Judge Hand does not even have the consolation of having his original position vindicated, since the lower federal courts must now contend with both *Hawn* and *Halecki*.

The dissent, although not as cogent as the majority, undoubtedly followed the trend that was developing in the earlier decisions of *Sieracki*

34. *United N.Y. & N.J. Sandy Hook Pilots Ass'n v. Halecki*, 79 Sup.Ct. 517, 521 (1959).

35. *Id.* at 522.

36. *Id.* at 523.

37. *Halecki v. United N.Y. & N.J. Sandy Hook Pilots Ass'n*, 251 F.2d 708 (2d Cir. 1958).

38. *Guerrini v. United States*, 167 F.2d 352, 354 (2d Cir. 1948), *cert. denied*, 335 U.S. 843 (1948).

39. *Halecki v. United N.Y. & N.J. Sandy Hook Pilots Ass'n*, 251 F.2d 708, 711 (2d Cir. 1958). In noting this case while it was still on the level of the court of appeals, a writer commented: "The issue in this area is no longer the extension of the protection of the unseaworthiness doctrine to shore-based workers." 58 COLUM. L. REV. 736, 742 (1958). At the time this appeared to be a proper interpretation of the status of shore-based workers.

and *Hawn*. Indeed, Justice Stewart's discussion of the latter case is most inadequate. Ironically, in another case decided the same day as *Halecki*, Justice Stewart, again writing for the majority, held on a subsidiary point that an employee of an independent contractor, engaged in repairing an oil pump to facilitate the unloading of a cargo of oil, came within the scope of the unseaworthiness doctrine.⁴⁰ The Justice believed that *Hawn* was controlling. Although Justice Stewart has apparently been able to solve the labyrinth of unseaworthiness, he has left the attorney with an ample supply of confused authority for both limiting and expanding the *Sieracki* doctrine.

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DUE PROCESS—POST CONVICTION SUPERVENING INSANITY HEARING

In conducting a proceeding to determine the present sanity of condemned petitioners, the prison warden refused to hear any testimony on their behalf. The petitioners' mandamus petitions contended that his refusal violated the due process clause of the fourteenth amendment. *Held*, the California statute¹ permitting execution of allegedly insane murderer on basis of the warden's unreviewable *ex parte* determination that prisoner is sane does not offend due process. *Caritativo v. California*, 357 U.S. 549 (1958).

The justifications for the common law rule *against* executing an insane man, vary considerably.² This concept has been adopted in almost every jurisdiction having capital punishment,³ either through legislative

40. The M/V "Tungus" v. Skovgaard, 79 Sup.Ct. 503, 508, n.9 (1959).

1. CAL. PEN CODE §§ 3700, 3701 (Supp. 1949), "If after his delivery to the warden for execution, there is good reason to believe that a defendant under judgment of death has become insane, the warden must call such fact to the attention of the district attorney . . . whose duty it is immediately to file in superior court a petition, stating . . . that the defendant is believed to be insane . . . thereupon the court must at once cause to be summoned and impaneled . . . a jury of twelve persons to hear such inquiry."

2. 4 BLACKSTONE, COMMENTARIES *396 (Blackstone considered the purpose of the rule was to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment); 3 COKE, INSTITUTES 6 (Lord Coke declared that it was not an example to others to execute an insane man, in addition it would be extremely inhumane and cruel); HALE, PLEAS OF THE CROWN § 34 (Stokes and Ingersoll ed. 1847) (Lord Hale reasoned that if he were of sound memory he might allege something to stay execution); 11 HOWELL, ENGLISH STATE TRIALS 474, 477 (1685) (Sir John Hawles reasoned that an inability to prepare for an afterlife was the basis for the rule.)

3. Solesbee v. Balkcom, 339 U.S. 9, 26 (1950) (appendix to dissenting opinion); WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE § 5, 463-470 (1954).